



Signed: July 29, 2010

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
MOUNT DIABLO YOUNG MEN'S
CHRISTIAN ASSOCIATION,

No. 10-44367-EDJ-11
Chapter 11

Debtor.

MEMORANDUM RE MOTION FOR REVIEW OF TRANSACTION

The above debtor has filed a motion requesting the court to review a payment of \$32,704.04 it made to Union Bank ("Union") to cover the attorneys' fees portion of Union's demand for full payment of its secured claim herein. See Bankruptcy Code § 506(b). Union made the demand, and the debtor made the payment, in connection with the closing of a sale by the debtor of property on which Union held a lien.

The debtor also requests the court, based on its review, to determine the amount of reasonable attorneys' fees it owes Union as part of Union's secured claim, and order Union to return any excessive portion of the fees the debtor paid.

////

Memorandum - Motion for Review

1 The debtor's motion alleges that the debtor "never received an
2 accounting" of the fees it paid Union, and that Union refused to
3 provide same. Debtor also alleges that "Union . . . has not
4 provided any evidence of legal services upon which a determination
5 of reasonableness can be made."

6 The debtor's motion does not explain how the court is to
7 determine reasonableness in the absence of an accounting or "any
8 evidence of legal services." Nor does the motion state why the
9 debtor cannot utilize the numerous tools available to a party in a
10 bankruptcy case to obtain information. See, e.g., Fed. R. Bankr. P.
11 9014(c) and 2004.

12 Suffice it to say that it would not be appropriate for the
13 court to conduct discovery, formal or informal, to obtain the
14 information the debtor lacks. Nor would it be appropriate for the
15 court to preside at any hearings at which the court, rather than the
16 debtor or creditor's committee, is acting as Union's adversary with
17 respect to the issue of Union's appropriate payment out of the
18 estate.¹ Nor can the court engage with Union or its counsel in any
19 exchanges of information and legal argument, or settlement
20 discussions (all part of the normal process of dispute resolution).

21
22 ¹The court appreciates the fact that it has an independent
23 duty to review applications for fees filed by officers of the
24 estate, even in the absence of an objection. In re Busy Beaver
25 Building Centers, Inc., 19 F.3d 833, 841 (3d Cir. 1994); In re
26 Auto Parts Club, Inc., 211 B.R. 29, 33 (BAP 1997). Union,
however, is not an officer of the estate required to submit a fee
application.

1 The court will therefore issue its order denying the debtor's
2 motion, without prejudice to any further proceedings initiated by
3 any party in interest regarding any payments to Union that the
4 debtor made during the course of these chapter 11 proceedings.

5 *** END OF MEMORANDUM ***
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COURT SERVICE LIST

Iain A. Macdonald
Macdonald and Associates
221 Sansome St. Third Floor
San Francisco, CA 94104

Reno F.R. Fernandez
Macdonald and Assoc.
221 Sansome St.
San Francisco, CA 94104

Nicolas DeLancie
Jeffer, Mangers, Butler & Marmaro LLP
2 Embarcadero Center
Fifth Floor
San Francisco, CA 94111-3824

Robert L. Eisenbach, III
Cooley Godward Kronish
101 California St. 5th Fl.
San Francisco, CA 94111-5800

Margaret H. McGee
Office of the U.S. Trustee
1301 Clay St. #690N
Oakland, CA 94612-5217